

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Genevieve Jane Jerke,
Debtor(s).

Case No: 04-31216-GFK

NOTICE OF HEARING AND MOTION FOR TURNOVER

TO: THE ABOVE NAMED DEBTOR(S), HER ATTORNEY GEORGE HULSTRAND,
AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on November 15, 2004 at 1:30 p.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F Kishel, in Court Room No: 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 1:30 p.m. on November 10, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than November 4, 2004, which is seven before the time set for the hearing (excluding Saturdays, Sundays and holidays). **IF NO RESPONSE IS TIMELY FILED, THE COURT MAY IN ITS DISCRETION ENTER AN ORDER GRANTING TURNOVER WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy procedure 4002, and Local Rule 1070-1. The petition commencing the debtor(s)' Chapter 7 case was filed on March 2, 2004. Charles W. Ries was appointed as Chapter 7 trustee on March 3, 2004. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §521, 541, 542 and 704 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property of the estate, and certain documents and information in order to properly administer the bankruptcy case.

6. By correspondence dated April 19, 2004; June 16, 2004; and July 12, 2004, attached hereto and incorporated herewith as Exhibit A, the trustee required turnover of property of the estate and information necessary to complete case administration.

7. The debtor(s) have failed to turn over:
- a. Documentation on the IRA;
 - b. Bank statements covering the date of filing and turnover of monies in the accounts as of the date of filing;
 - c. Computation and turnover of accrued non-exempt wages;

- d. Cash on hand of \$40;
- e. 2003 tax returns and all refunds, if any;
- f. The 1993 Olds Cutlass Ciera and 1999 Chevy Blazer.

8. Because the debtor(s) failed to provide the requested information and assets, the trustee has been unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. § 704.

9. The trustee has incurred costs and expenses, including attorney fees in bringing this motion.

10. In order to ensure that the debtor(s) comply with any order issued by the Court as a result of this motion in a timely manner, the trustee requests that the order be specifically made applicable to revocation of the discharge under 11 U.S.C. § 727(a)(6)(A) to allow the trustee to pursue revocation under 727(d)(3) should the debtor(s) not promptly comply with its provisions.

11. This verified motion is based upon all of the files and records herein.

12. Pursuant to Local Rule 9013-2, a separate Memorandum of Facts and Law is submitted with this motion.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing the debtor(s) to turn over to the trustee the following:
 - a. Documentation on the IRA;
 - b. Bank statements covering the date of filing and turnover of monies in the accounts as of the date of filing;
 - c. Computation and turnover of accrued non-exempt wages;
 - d. Cash on hand of \$40;
 - e. 2003 tax returns and all refunds, if any;
 - f. The 1993 Olds Cutlass Ciera and 1999 Chevy Blazer.
2. Directing the debtor(s) to complete the turnover of information and assets within 30 days of the entry of an order granting the trustee's motion.
3. Directing that the failure to comply with the order of the Court requiring a turnover and an accounting as provided for herein be grounds for revocation of discharge under 11 U.S.C. 727(a)(6)(A).
4. For costs and attorney fees of \$250.00 in connection with bringing this motion.
5. For such other relief as the Court deems just and equitable.

Dated this 20th day of October, 2004

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street
P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion for Turnover and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY
CHARLES W. RIES
JOHN CHUCK PETERSON
RENEE C. RUBISH
PAUL J. SIMONETT

PHONE: 507.625.6600

April 19, 2004

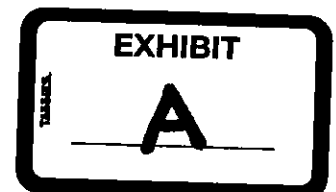
George E Hulstrand
Attorney at Law
PO Box 549
Willmar MN 56201

RE: Genevieve J. Jerke
Bankruptcy No: 04-31216-GFK

Dear Mr. Hulstrand:

Please provide me with the following information:

1. Computation and turnover of the accrued, non-exempt wages. Please provide me with paystubs for immediately prior to and subsequent of the date of filing for verification;
2. Copies of the bank statements covering the date of filing;
3. Turnover of the balance in the account as of the date of filing;
4. Turnover of the cash on hand of \$40;
5. Documentation on the stocks and bonds, including coop dividends and turnover of the monies received post petition;
6. Offer or turnover on the Oldsmobile and Chevy Blazer. Please provide me with an appraisal if the debtor intends make an offer.
7. Copies of the 2003 tax returns for 2003 and all refunds as soon as they are received;
8. Copies of documentation on the IRA.



April 19, 2004
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It is my intention to file an objection on the 401k - IRA, the checking account, and the 1999 Chevy and 1993 Oldsmobile. Hopefully, we can resolve all of the issues with the exception of the IRA, which will be held over pending the decision in the *Clark* case.

Sincerely,



Charles W. Ries
cw_ries@mrr-law.com

CWR:jra



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEJERDING*
TANYA M. JOHNSON*

PHONE: 507.625.6600

June 16, 2004

George E Hulstrand
Attorney at Law
PO Box 549
Willmar MN 56201

RE: Genevieve J. Jerke
Bankruptcy No: 04-31216-GFK

Dear Mr. Hulstrand:

I am assuming that the settlement offer is not acceptable but I will notice the claims and see what is filed by way of claims.

Please provide me with the following:

1. Documentation on the IRA;
2. Bank statements covering the date of filing and turnover of monies in the accounts as of the date of filing;
3. Computation and turnover of accrued non-exempt wages;
4. Turnover of the cash on hand of \$40;
5. 2003 tax returns and all refunds;
6. An offer on the Oldsmobile and Chevy Blazer.

The monies in the bank accounts will have to be turned over immediately or I would intend to bring a turnover motion. I would propose to withdraw such amount out of the IRA as is necessary to satisfy the claims and I want to obtain the information to make that withdrawal but I will wait until I know how much needs to be withdrawn so as to minimize the tax ramification. The tax ramifications on the withdrawal will be born by the bankruptcy estate and it will not fall back on the debtor. Since it appears as though there will be assets remaining to be paid back to the debtor after payment of the

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Page 2

unsecured creditors, I will attempt to withdraw only the minimal amount to satisfy the unsecured creditors.

Also, since the debtor will end up with some remaining assets, they may decide it makes more sense to pay money into the estate so the debts can be satisfied as opposed to having the tax ramifications incurred. That obviously is up to her except that the vehicles and the money in the bank will have to be turned over.

If she has any questions, please let me know; otherwise I would appreciate an offer on the vehicles and a turnover of the monies in the accounts at the earliest convenience.

Sincerely,

Charles W. Ries
cw_ries@mrr-law.com

CWR:jmm



GERALD L. MASCHKA*
JOHN M. (JACK) RIEDY*
CHARLES W. RIES
JOHN CHUCK PETERSON
MARCUS J. CHRISTIANSON**
RENEE C. RUBISH
JORUN GROE MEIERDING*
TANYA M. JOHNSON*

PHONE: 507.625.6600

July 12, 2004

George E Hulstrand
Attorney at Law
PO Box 549
Willmar MN 56201


RE: Genevieve J. Jerke
Bankruptcy No: 04-31216-GFK

Dear Mr. Hulstrand:

Enclosed please find my letter to you dated June 16, 2004. Please respond by July 19th or I would intend to proceed with a turnover motion.

The exemptions on the 1999 Chevy Blazer and the 1993 Olds Cutlass Ciera have been denied. The debtor is not authorized to use these vehicles until a settlement has been made with the bankruptcy estate.

Sincerely,



Charles W. Ries
cw_ries@mrr-law.com

CWR:jra

Enc.

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*BOARD CERTIFIED AS CIVIL TRIAL SPECIALIST BY THE NATIONAL BOARD OF TRIAL ADVOCACY AND/OR THE MINNESOTA STATE BAR ASSOCIATION
*ALSO ADMITTED IN SOUTH DAKOTA *ALSO ADMITTED IN IOWA *ALSO ADMITTED IN NORTH DAKOTA

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-31216-GFK

Genevieve Jane Jerke,

Debtor(s).

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Charles W. Ries, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on March 2, 2004, and is pending before this Court.
2. Charles W. Ries was appointed as Chapter 7 trustee on March 3, 2004.
3. The trustee made demand upon the debtor(s) for turnover of information needed to administer the bankruptcy case on April 19, 2004; June 16, 2004; and July 12, 2004, as shown in Exhibit A to the instant motion, and incorporated therein.
4. The debtor(s) failed to supply necessary information to the trustee in response to the turnover demand.
5. The debtor(s) continue to withhold information necessary to conclude administration of the bankruptcy case.

DISCUSSION

1. Turnover of Information.

Bankruptcy debtors receive a substantial benefit when relieved of personal liability for repayment of unsecured obligations through discharge. In achieving a balance between the rights of debtors and their creditors, Congress has determined that debtors have an affirmative duty to turn over information necessary to a complete administration of the bankruptcy case.

Sections 521(3) and (4) of the Bankruptcy Code provide in pertinent part:

[t]he debtor shall -- . . .

(3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under Section 344 of this title; . . .

The law interpreting the above sections of the Code is well settled concerning a debtor's affirmative obligation to cooperate with the trustee and to supply necessary information for case administration. See: In re: Lange, 110 B.R. 907, 909 (Bankr. D.Minn. 1990); In re: Bentley, 120 B.R. 712, 715 (Bankr. S.D.N.Y. 1990); and In re: Ridley, 115 B.R. 731, 736 (Bankr. D.Mass. 1990).

Due to the debtor(s)' failure to supply necessary information, administration of this bankruptcy case has been unduly delayed. The trustee is entitled to an order requiring that the debtor(s) provide information regarding documentation on the IRA; bank statements covering the date of filing and turnover of monies in the accounts as of the date of filing; computation and turnover of accrued non-exempt wages; cash on hand of \$40; 2003 tax returns and all refunds, if any; and the 1993 Olds Cutlass Ciera and 1999 Chevy Blazer.

2. Forfeiture of Discharge.

Under 11 U.S.C. 727(a)(6)(A), the Code provides that if debtors refuse to comply with court orders, discharge of debts may be withheld. In this case the trustee requests that if the trustee's motion is granted, the terms of the order be applicable under 727(a)(6)(A) so that the debtor(s) will have an additional incentive to perform in a timely manner.

Based upon the foregoing the Chapter 7 trustee is entitled to an Order requiring that the debtor(s) turn over non-exempt funds, if any, and information requested in Exhibit A to the Motion so that he may conclude administration of the bankruptcy estate. To expedite resolution of this matter, the trustee requests that the Order be designated a lawful Order pursuant to 11 U.S.C. 727(a)(6)(A).

Dated this 20th day of October, 2004.

/e/Charles W. Ries
Charles W. Ries
200 Union Square Business Center
201 North Broad Street - P. O. Box 7
Mankato, MN 56002-0007
Telephone (507) 625-6600
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Trustee's Memorandum of Facts and Law in Support of Motion for Turnover with Exhibit A and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries
Charles W. Ries

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-31216-GFK

Genevieve Jane Jerke,

Debtor(s).

DECLARATION RE: SERVICE BY MAIL

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 20th day of October, 2004, she served the Notice of Hearing and Motion for Turnover and Trustee's Memorandum of Facts and Law in Support of Motion for Turnover by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Genevieve Jane Jerke
213 Central Avenue
Madison, MN 56256

George E Hulstrand
Attorney at Law
PO Box 549
Willmar, MN 56201

United States Trustee
1015 U S Courthouse
300 S 4th St
Minneapolis MN 55415

/e/Janine Miller_____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No: 04-31216-GFK

Genevieve Jane Jerke,
Debtor(s).

ORDER

The above captioned matter came before the Court on the _____ day of _____, 2004, on motion by the Chapter 7 trustee Charles W. Ries seeking an order requiring the debtor(s) to turn over information and certain assets.

Charles W. Ries appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

1. That the debtor(s) shall turn over to the trustee within thirty (30) days of the entry of this Order:

- a. Documentation on the IRA;
- b. Bank statements covering the date of filing and turnover of monies in the accounts as of the date of filing;
- c. Computation and turnover of accrued non-exempt wages;
- d. Cash on hand of \$40;
- e. 2003 tax returns and all refunds, if any;
- f. The 1993 Olds Cutlass Ciera and 1999 Chevy Blazer.

2. That this Order shall constitute a lawful Order within the meaning of 11 U.S.C. 727(a)(6)(A) for purposes of discharge revocation should the debtor(s) fail to comply with its terms in a timely manner.

3. That the attorney for the trustee is hereby awarded \$250.00 as and for attorney fees and costs in connection with the motion for turnover. That said award shall be paid to Charles W. Ries as Trustee for the estate within 10 days of entry of this Order.

Dated this _____ day of _____, 2004.

Honorable Gregory F. Kishel
United States Bankruptcy Judge